IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL NO 2002 of 2004
in
SPECIAL CIVIL APPLICATION NO 11709 of 2004
with
CIVIL APPLICATION NO 8970 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HINDUSTAN PETROLEUM CORPN LTD

Versus

JUPITER PETROLEUM

Appearance:

1. LETTERS PATENT APPEAL No. 2002/04 with CA 8970/04

MR GN SHAH for Appellant No.

MR PAHWA for M/S THAKKAR ASSOC. for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE M.C.PATEL

Date of decision: 22/02/2005

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE B.J.SHETHNA)

1. This Appeal, filed by the Appellant Hindustan Petroleum Corporation Limited (for short "HPCL") against an order dated 24.9.2004, passed by the learned Single Judge (K.S.Javeri, J.) in Special Civil Application No.11709 of 2004, granting interim relief in terms of Para : 12(C) & (D) of the main petition on condition that the petitioner - present respondent Jupiter Petroleum shall not continue to do its business with Shri Vasant and that it will try to increase the sale of product of HPCL and also take all precautions to remove deficiency and omission alleged against the petitioner. This Appeal was straightway admitted by another Division Bench of this Court on 26.11.2004 after hearing learned Counsel Shri G.N.Shah for the Appellant Co. and Shri Navin Pahwa, appearing on Caveat, for the respondent Co.

2. On Civil Application No.8970 of 2004, filed in the Appeal, Their Lordships of the Division Bench admitted the Application on 26.11.2004 by issuing Rule on it and fixed it for final disposal on 13.12.2004 and granted ad.interim relief in terms of Para : 4(a) of the Application subject to the direction that the Arbitrator will not function until then. The said ad.interim relief was extended from time to time, which is operating till today. This Application was placed for final disposal today. However, it was agreed by all the learned Counsel for the parties that main LPA as well as this Civil Application, both may be disposed of finally today, therefore, LPA No.2002/04 is heard and finally disposed of today by this order, along with Civil Application No.8970 of 2004.

3. Heard the learned Counsel for the parties.

4. Hon'ble Chief Justice of this Court passed an order on administrative side, nominating Hon'ble Ms. R.M. Doshit, J. in Arbitration Petition No.23 of 2004 for hearing and deciding the said petition, filed under the Arbitration Act. Notice dated 10.2.2004 was issued by the present appellant - HPCL calling upon its dealer Jupiter Petroleum Co. to explain the short coming mentioned in the notice. The petitioner Jupiter Petroleum Co., however, by its letter dated 17.2.2004 calling upon the appellant Corporation to appoint Hon'ble Mr.Justice A.P.Ravani (retired Chief Justice of Rajasthan High Court) as sole Arbitrator to resolve the disputes. Inspite of receipt of the notice and expiry of period of 30 days from the date of receipt of Notice, the

Corporation did not agree to refer the said dispute to the Arbitrator, therefore, the petitioner company Jupiter Petroleum Co. approached the learned Single Judge (Ms.R.M.Doshit, J.) nominated by the Hon'ble Chief Justice, by way of petition under Arbitration Act No.23 of 2004. The said petition was finally disposed of by Ms.R.M.Doshit, J. on 1.9.2004 by appointing Shri Umesh K. Vishvekar, Dy. General Manager (Supplies & Shipping), HPCL, as Sole Arbitrator to resolve the disputes between the parties in relation to the memorandum of Agreement dated 2.7.1999 (Annexure:I to the main petition).

5. Aggrieved by the aforesaid order M/s. Jupiter Petroleum Co. approached this Court by way of Special Civil Application No.11709 of 2004 under Article 226 of the Constitution. On 24.9.2004 the learned Single Judge of this Court (K.S.Javeri, J.) admitted the petition by issuing Rule on it, making it returnable on 15.12.204 and after hearing the learned Counsel for the parties the learned Single Judge passed detailed reasoned order granting interim relief in favour of the petitioner Company, which is challenged in this Appeal by the Appellant - HPCL.

6. Both the learned Counsel for the parties initially argued the matters on merits and cited several Judgments in their favour. Thereafter, the matter was adjourned for finding out some via-media, but the attempts failed, therefore, today we are requested to dispose of this Appeal, without assigning any reasons and send the matter back to the learned Single Judge for deciding the main writ petition i.e. Special Civil Application No.11709 of 2004 on merit by setting aside the order of interim relief granted in favour of the original petitioner Jupiter Petroleum Co.

7. In view of the above, without expressing any opinion about the legality and validity of the order passed by the learned Single Judge granting interim relief in favour of the original petitioner in Special Civil Application No.11709 of 2004, the said order is hereby quashed and set aside without assigning any reasons, as requested by the learned Counsel for the parties. Once the order of interim relief is set aside then it is desirable that the main writ petition be heard and disposed of as early as possible. We are told by both the learned Counsel for the parties that the main Special Civil Application No.11709 of 2004 is already placed on the Board for final hearing before the learned Single Judge. If that is so, we request the learned

Single Judge to take up the said writ petition i.e. Special Civil Application No.11709 of 2004 for final disposal, as early as possible, and try to decide the same at the earliest, after hearing the learned Counsel for the parties. It goes without saying that setting aside the order passed by the learned Single Judge, granting interim relief in favour of the petitioner, would never come in the way of learned Single Judge in deciding the writ petition on merits, strictly in accordance with law. Both the learned Counsel for the parties, Shri Shah for the appellant Corporation and Shri Pahwa for the respondent Company, assure this Court that as and when the main matter i.e. Special Civil Application No.11709 of 2004 placed on the Board before the learned Single Judge for final disposal, at that time they will not ask for any unnecessary adjournments and will proceed with the matter.

Accordingly, this Appeal is allowed.

Once the Appeal is allowed then the Civil Application No.8970 of 2004 would not survive any more and accordingly it is disposed of. Rule discharged. No order as to costs.

(B.J.Shethna, J.)

Date : February 22, 2005

(M. C. Patel, J.)

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